IN THE

Supreme Court of the United States

OCTOBER TERM, 1955

No. 180

MASTERCRAFTERS CLOCK & RADIO CO.,

Petitioner,

vs.

VACHERON & CONSTANTIN-LE COULTRE WATCHES, INC.

and

JAEGER-LE COULTRE, S. A.,

Respondents.

SUPPLEMENTAL BRIEF IN OPPOSITION

Respondents present this Supplemental Brief in Opposition only to point out to this Court with particularity why Petitioner's Supplemental Reply Brief does *not* set forth any reason why a writ of certiorari should be granted in *this* case.

Petitioner does, of course, state, more or less correctly, one of the recognized general situations in which this Court sometimes grants writs of certiorari when it writes:

> "Where, in separate cases, substantially the same question is presented for determination, this court has in the past allowed such petitions." (Petitioner's Supplemental Reply Brief, p. 2.)

From this generality petitioner attemps to argue that the pendency of a petition for a writ of certiorari in *West Point Manufacturing Co.* v. *Detroit Stamping Co.*, Number 265, October Term, 1955, constitutes a reason for granting the writ in the instant case. The fallacy of petitioner's position is that the *West Point* case does *not* present substantially *the same question* as does the instant case, either on the facts or the law.

On the *fact* side: In the *West Point* case, the object whose appearance, *and* substance, was copied was an object of industrial utility and the subject of a recently expired patent. In the instant case, the object whose appearance, *but not* substance, was copied had never been the subject of statutory protection. It was an expensive mechanical clock dressed in a guise which had been created to serve as a distinctive and identifying symbol for the product of a single manufacturer and so exclusively used for more than thirteen years. This symbol was appropriated to cloak a cheap electric clock.

On the *law side*: In the *West Point* case, the Court of Appeals for the Sixth Circuit was interpreting the meaning of a *Federal* statute, the Trade-Mark Act of 1946*. In the instant case, the Court of Appeals for the Second Circuit was interpreting the law of the State of New York with respect to unfair competition. There is, and could be, no duty upon this Court to see that uniformity exists between the laws of several states with respect to matters of state competence, *Erie R. Co.* v. *Tompkins*, 304 U. S. 64 (1938). It is fundamental that in such fields each state is free to reach by legislation or by judicial decision such results as seem best to it.

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* 60 Stat. 427.

Petitioner's Supplemental Reply Brief presents no reason for allowance of the writ and, consequently, the petition should be *denied*.

Respectfully submitted,

W. Brown Morton,
Counsel for Respondents.